

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO SENATE BILL 28**

**Call to Order:** By **CHAIRMAN DON HARGROVE**, on April 6, 2001 at 10:00 A.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Don Hargrove, Chairman (R)  
Rep. Mark Noennig, Chairman (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Rep. Larry Jent (D)  
Rep. Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Lynette Brown, Committee Secretary  
David Niss, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: SB 28

#### **Discussion:**

**SEN. DON HARGROVE** stated the conference committee SB 28 dealt with child support enforcement orders. He said the discussion would deal with Section 6 of the amendment.

**SEN. MIKE HALLIGAN** expressed approval of the House amendments. He stated he had a problem with the requirement of someone who

filed or came into the agency with a foreign (from a state other than Montana) support order having to file a brand new action in the district court. He said requiring this would add an extra step which would result in delay of the process and extra money due to attorney fees. **SEN. HALLIGAN** stated the administrative cost was unnecessary.

**SEN. HALLIGAN** asked **Amy Pfeiffer** to expound upon Paragraph 6. Sub-section 10 of the amendment. **Amy Pfeiffer** told the committee this bill was drafted in response to the Seubert vs. Seubert case. She said this amendment required the agency to go to court to finalize their modifications. This included Montana orders as well as any foreign (from other states) orders. She stated this was not necessary as a result of the Seubert decision. **Ms. Pfeiffer** explained they would not know the results of how often they would be required to go to court until the next biennium. If the agency was required to go to court, an attorney and a case worker would have to travel to court also. This would result in a cost concern and would be a burden on personnel. **Ms. Pfeiffer** wanted the committee to consider removing "administrative agency from another jurisdiction" from the language.

**SEN. HALLIGAN** asked **Amy Pfeiffer** how many of the cases were uncontested. **Ms. Pfeiffer** responded most were uncontested; she added very few go to district court. **Ms. Pfeiffer** said the process presently used was fairly successful.

**REP. NOENNIG** asked **Amy Pfeiffer** why she anticipated filing the out-of-state orders to be burdensome if the process was so successful. She answered they would not know for sure until they did this. **Ms. Pfeiffer** said they had planned on this process for the Seubert case, but had not anticipated doing this for all foreign orders as well.

**SEN. HALLIGAN** told the committee since most of the cases were uncontested, the process could be delayed. **SEN. HALLIGAN** proposed to strike the language requiring the agency to go to court in respect to the foreign court order.

**REP. NOENNIG** told **SEN. HALLIGAN** the bill presently allowed the agency to enforce the foreign order. **REP. NOENNIG** said the question was if you could modify the foreign order. **SEN. HALLIGAN** agreed.

**REP. NOENNIG** stated the procedure for modification of child support orders changed in the last session. The problem was deciding if an agency had the power to change or modify foreign court orders. He said the Montana Supreme Court ruled that

agencies could not modify orders from a judge. **REP. NOENNIG** stated the problem, in regards to Montana State district court orders, was fixed by the manner of drafting for this bill. He said the court orders state the district court had to stamp the orders. He added the problem was when an order came from another state. **REP. NOENNIG** said having an agency modify a foreign court order was a different issue.

**SEN. HALLIGAN** asked **Amy Pfeiffer** to summarize the situation for the committee. **Amy Pfeiffer** agreed there could be a challenge down the road to a foreign court order. **Ms. Pfeiffer** stated they needed this bill to pass because they needed a way to accomplish the federal requirement for modifications. She said even if a hearing was not requested in district court, having to file in district court and wait the amount of time required would delay the finality of the modification. She reiterated they would not know the final results until the next biennium.

**SEN. HALLIGAN** told **SEN. RIC HOLDEN** he wanted to change page 18 of the bill which was amendment 6 on page 2 of the House amendments. He stated he was focusing on if the order was entered into by a court or administrative agency of another jurisdiction, the order must be filed within a Montana district court. **SEN. HALLIGAN** proposed to strike the language requiring the foreign court order to be followed.

**SEN. HOLDEN** asked **SEN. HALLIGAN** about the families involved when they move. **SEN. HALLIGAN** agreed with **SEN. HOLDEN** saying that since the family had gone through the time and work of getting the court order, they should be able to go to the agency to have the court order changed instead of having to go through the court system.

**REP. YOUNKIN** asked if the issue was just problems associated with modified foreign orders. **SEN. HALLIGAN** answered that was correct.

**SEN. NOENNIG** said the question was who would make the decision when there was a new location, the agency or the courts.

**SEN. HALLIGAN** told the committee the district court judges did not want these cases in the courts.

**REP. YOUNKIN** asked **Amy Pfeiffer** if the problem arose when the two parties did not agree with the modification. **Amy Pfeiffer** agreed.

**REP. NOENNIG** asked **SEN. HALLIGAN** if other states had done research to determine if this was separation of powers. **SEN. HALLIGAN** responded he had not.

**REP. YOUNKIN** asked **Amy Pfeiffer** if the agency still had to go to court if the parties agreed. **Ms. Pfeiffer** replied, yes, currently, the court would still have to approve the order.

**SEN. HALLIGAN** asked **Amy Pfeiffer** if they looked into whether other states were enforcing the foreign court orders. She responded they did look at other states. **Ms. Pfeiffer** explained the Seubert case discussed administrative modification processes in Missouri and Iowa and pointed out how they were different than Montana. **Ms. Pfeiffer** told the committee the intent of this bill was the filing in district court was a continuation of an already existing court file. Under the amendment, when the agency would pick a Montana court to file their proposal with, since the Montana court did not issue the order to begin with, it would be a new filing in the district court which would generate new burdens.

**SEN. HARGROVE** stated the question was whether there was truly a constitutional question of separation of powers. He asked if anyone had talked to the Attorney General about the constitutional aspects.

**Motion:** **SEN. HALLIGAN** moved **TO STRIKE THE NEW LANGUAGE AND REINSERT THE OLD LANGUAGE ON PAGE 17, LINE 29 and on PAGE 18, NEW LANGUAGE, reinsert the old language through page 18 line six proceeded** on the reference bill **BE ADOPTED**.

*{Tape : 1; Side : B; Approx. Time Counter : 0}*

**Discussion:**

**REP. NOENNIG** asked if there was a procedure for the Uniform Child Support Act for filing. **SEN. HALLIGAN** answered there was a federal law requiring an administrative process be in place for enforcing the orders. He added there was also a Uniform Foreign Orders Adjustment Enforcement Act. **Amy Pfeiffer** explained very few people used the Foreign Orders Adjustment Enforcement Act for child support. She said the Uniform Interstate Family Support Act was seldom used in Montana district courts; however, her agency used the act in their process to deciding the standards to use to determine which court to file in.

**SEN. HALLIGAN** stated he understood constitutional concerns, but he wanted to allow the process to work.

**REP. LARRY JENT** said there were two concerns: (1) separation of powers issues and (2) having to give full faith and credit to the judgements of another state.

**REP. JENT** asked **Amy Pfeiffer** if the department's position was they could modify out-of-state orders, but not in-state orders.

**Ms. Pfeiffer** responded that was correct.

**SEN. HALLIGAN** expressed he was concerned about the delays associated with the complication. Even though the parties may agree, they still had to go to court.

**Vote:** Motion TO STRIKE THE NEW LANGUAGE AND REINSERT THE OLD LANGUAGE ON PAGE 17, LINE 29 AND ON PAGE 18, NEW LANGUAGE, REINSERT THE OLD LANGUAGE THROUGH PAGE 18 LINE SIX PROCEEDED ON THE REFERENCE BILL BE ADOPTED. Motion failed 3-3. The roll call vote results were: SEN. HARGROVE, SEN. HOLDEN, and SEN. HALLIGAN voting aye; REP. NOENNIG, REP. YOUNKIN, and REP. JENT voting no.

**Motion/Vote:** SEN. HALLIGAN moved that TO STRIKE THE LANGUAGE "OR ADMINISTRATIVE AGENCY", PAGE 17, LINE 29 AND PAGE 18, LINE 2 BE ADOPTED. Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 10:45 A.M.

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SEN. DON HARGROVE, Chairman

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Lynette Brown, Secretary

MN/DH/

**EXHIBIT** (ccs78sb0028aad)